IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2006

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THE HON'BLE MR.JUSTICE R.REGUPATHI

CRL.O.P.NO.23225 of 2006

Mr.K.Mahendran .. Petitioner

vs.

State rep.by
The Sub Inspector of Police
XII Team, Central Crime branch
Chennai. .. Respondent

Petition filed under Section 482 of Cr.P.C to pass an order to the respondent herein, setting aside his instructions issued to the petitioner's bankers M/s.State Bank of India, Saligramam branch No.49, Arcot Road, Saligramam, Chennai 600 093 to freeze the petitoner's account in C.A.No.30012025699 dated 2.6.2006.

For Petitioner : Mr.S.Samuvelrajapandian
For respondent : Mr.P.Kumaresan, Addl.P.P.

ORDER

The petitioner is an accused subsequently added as A.7 in the case in Crime No.392 of 2006 on the file of the respondent police for the offence punishable under Sections 380, 465, 467, 468, 471, 474 and 420 IPC.

2. The case of the prosecution is that A.1 to A.6 used international credit card and cheated to the tune of Rupees twenty five lakhs. All the accused alleged to have stayed in the office of the petitioner and on the statement of other accused, premise of the petitioner has been searched and 30 passports have been recovered. During the course of investigation, under instructions by the respondent police as per their letter dated 2.6.2006, the bank account bearing C.A.No.30012025699 in State Bank of India, Saligramam branch No.49, Arcot Road, Saligramam, Chennai 600 093 has been frozen by the State Bank of India by their order dated 23.6.2006, which reads as follows:

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> "This is to inform you that the operations in the above mentioned current account at our branch has been frozen with effect from 2.6.2006 under instructions from Sub Inspector of Police, Central Crime Branch, Egmore, Chennai 600 006 vide their letter dated 2.6.2006 in connection with criminal investigation."

3. The learned counsel for the petitioner submits that as per the order issued by the respondent police, the account has been frozen and under the provisions of law, as per Section 102(3) of Cr.P.C., the officer effecting seizure shall forthwith report the same to the Magistrate having jurisdiction, but in the present case, the same has not been done. Further, Section 105(E)(2) of Cr.P.C reads as follows:

> "said order passed shall have no effect unless the said order is confirmed by an order of the said court, within a period of 30 days of its being made"

Under such circumstances, it has been contended that the impugned order passed under instructions by the respondent police becomes non-est. Further, because of the order passed, the petitioner could not operate his account, which has caused a great prejudice to him. It is further submitted that the petitioner has deposited some amount in the bank and he is willing to keep the said amount in deposit, without withdrawing, till he receives appropriate orders in this regard.

4. Per contra, the learned Additional Public Prosecutor submits that it is true that the respondent has not approached the learned Magistrate within the stipulated period and obtained an order in this regard. However, there are materials to substantiate that the amount in deposit is related to the crime and may be required for the purpose of the case. On verification of the Income-Tax report, it is seen that the amount in deposit is not reflected. Therefore, there is prima facie case made out by the prosecution.

5. I have perused the materials available on record.

6. The order has been passed by the State Bank of India under instructions by the respondent police on 23.6.2006. The seizure effected, as per Section 102(3) of Cr.P.C., would have been intimated to the learned Magistrate forthwith and the same has not been done. As per Section 105 (E)(2) of Cr.P.C., proceedings would have been initiated before the learned Magistrate by the respondent police and the respondent police would have received an order in this regard. Such steps have not been taken by the respondent police.

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7. Under such circumstances, the procedure prescribed is violated. The order dated 23.6.2006 becomes non-est and further direction is necessary. Accordingly, the order dated 23.6.2006 issued by the State Bank of India under instructions by the respondent police is set aside. The Manager of the State Bank of India, Saligramam branch No.49, Arcot Road, Saligramam, Chennai 600 093 is directed to keep the amount in deposit under Fixed Deposit and is further directed that the petitioner should not be allowed to withdraw the same. However, the Manager may allow the petitioner to operate his account. In the mean time, the petitioner is at liberty to move the learned Magistrate for further appropriate relief, if so advised, in this regard. With this observation, the petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ajr

To

1. The Manager,
State Bank of India,
Saligramam Branch,
No.49, Arcot Road,
Saligramam, Chennai - 93.

2. The Sub Inspector of Police,
XIII Team, Central Crime Branch,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

1 cc To Mr.S.Samuel Raja Pandian, Advocate, SR.58651.

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GV(CO)
RVL 19.12.2006

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